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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/653,193

09/03/2003

Masami Mackawa

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11/26/2008

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EXAMINER

PORTER, RACHEL L

ART UNIT

PAPER NUMBER

3626

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/653,193

Applicant(s)

MAEKAWA, MASAMI

Examiner

RACHEL L. PORTER

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the application filed 8/4/08. Claims 1-21 are pending.

Election/Restrictions

2. Newly submitted claim 21 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-20, drawn to scheduling for an administrative function classified in class 705, subclass 8.
- II. Claim 21, drawn to a bed with means for transferring a patient classified in class 5, subclass 87.1.

The inventions are distinct, each from the other because of the following reasons:

4. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has separate utility such as transporting a patient to various locations. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and

examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement

will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for

prosecution on the merits. Accordingly, claim 21 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kameda et al (US 5,923,018--hereinafter Kameda) in view of Strum et al (US 5,842,173).

[claim 1] Kameda discloses an examination scheduling program for a nuclear medical examination apparatus having computer executable instructions stored in computer memory for causing a computer to create a schedule for each patient including an examination by the nuclear medical examination apparatus and a medication accompanying the examination, said program causing said computer to perform:

- function for fetching information on contents of the examination for each patient and an order of examination for each patient; and (col. 10, lines 40-49; col. 17, lines 54-col. 18, line 31)
- function for creating an examination schedule to avoid overlapping in time between timing of the medication and examination for each patient, based on

said information on contents of the examination and an order of examination and the waiting time. (col. 10, lines 50-65)

- a function for fetching a waiting time from the medication to the examination set according to a type of examination; (Figure 2; col. 10, lines 1-49; Figure 7; col. 17, lines 54-col. 18, line 31—time increments between medication and testing/process are displayed)

Kameda discloses the program as described above, but does not expressly disclose a function to determine overlapping between timing of the procedures (medication and examination) for each patient and timing of the procedures (medication and examination) for other patients.

Strum discloses a function to determine overlapping between timing of the procedures for each patient and timing of the procedures for other patients. (Figure 3, 10; col. 14, lines 10-28—provides information on waiting periods, locations and procedures regarding multiple patients) At the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the program of Kameda with the teaching of Strum to include a function that determines overlap between timing of the procedures for each patient and timing of the procedures for other patients. As suggested by Strum, one would have been motivated to include this feature to improve time management and operational efficiency of key health care professionals and administrators involved in the delivery of surgical services. (col. 3, lines 30-32)

[claim 2] Kameda discloses an examination scheduling program as defined in claim 1, wherein said schedule for each patient is expressed by a pattern having a time span

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according to the type of examination, said pattern presenting the timing of the medication, the waiting time and the contents of the examination. (Figure 8; col. 18, lines 9-31)

[claim 3] Kameda discloses the examination scheduling program as defined in claim 1, wherein said schedule for each patient is displayed in form of a pattern on a time chart, with a line representing present time displayed to move on the time chart with progress of time. (Figures 5-7)

[claim 4] Kameda discloses the examination scheduling program as defined in claim 2, wherein said schedule for each patient is displayed in form of a pattern on a time chart, with a line representing present time displayed to move on the time chart with progress of time. (Figures 4, 9)

[claim 5] Kameda discloses the examination scheduling program as defined in claim 1, wherein said schedule is altered by moving said pattern on said time chart with a pointing device.

[claims 6-8] Kameda discloses the examination scheduling program as defined in claim 2, wherein said schedule is altered by moving said pattern on said time chart with a pointing device. (col. 12, lines 56-59—various input devices include a mouse, i.e. a point device)

[claims 9-16] Kameda discloses an examination scheduling program, wherein said schedule for each patient is under control, and a correlation is made between actual measurements including actual medication and examination times, and data collected

by said medical examination apparatus. (Figure 5, 6, 9; col. 17, lines 1-48; col. 18, lines 32-66)

[claims 17-20] Kameda discloses the examination scheduling program as defined in 1, further comprising a step of inputting an actual medication time, a step of comparing a scheduled medication time and said actual medication time, and a step of creating an examination schedule all over again when said step of comparing shows a disagreement. (Figure 5; col. 17, lines 1-29: result flag shows if medical action has or has not been performed.)

Response to Arguments

7. Applicant's arguments filed 8/4/08 have been fully considered but they are not persuasive.

(A) Applicant argues that Kameda does not disclose "a function for fetching a waiting time..."

Applicant is arguing a newly added limitation. The examiner has provided additional citations and new grounds of rejections to address the newly added claim limitations.

(B) Applicant argues that Kameda does not meet the claim limitations because an operator performs the recited functions in the Kameda reference.

In response, the Examiner respectfully disagrees with applicant's interpretation of the Kameda reference. The system and method of Kameda is computer-implemented, and applicant has claimed a computer program for retrieving data, and scheduling. To

the extent that an operator may be perform some steps in Kameda, the data retrieval and scheduling are performed using a computer, and therefore require a computer program. The examiner respectfully submits that the current claim language does not preclude such involvement.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL L. PORTER whose telephone number is (571)272-6775. The examiner can normally be reached on M-F, 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, (Christopher) Luke Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. L. P./
Examiner, Art Unit 3626

/C Luke Gilligan/
Supervisory Patent Examiner, Art Unit 3626